ANNUAL REPORT 2008

Labour Relations Board

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LABOUR RELATIONS BOARD

2008
ANNUAL REPORT

Ministry of Labour
Honourable Murray Coell, Minister

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October 13, 2009

The Honourable Murray Coell
Minister of Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Minister:

RE: Labour Relations Board 2008 Annual Report

I am pleased to forward the 2008 Annual Report of the Labour Relations Board for the year ending December 31, 2008. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,
LABOUR RELATIONS BOARD

Brent Mullin
Chair

Enclosure

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CHAIR'S MESSAGE

As set out in the previous Chair's Message, the Board has now completed interpreting and implementing the critical 1993 and 2002 amendments to the Code. The Board also once again has a fully restored Mediation Division. This has allowed us to focus on a meditative and problem-solving approach across the full scope of labour relations matters before us, consistent with the new framework for labour relations in the Code. This will continue to be the focus of our work.

Within that, however, it is time for the Board to concentrate more intently on ensuring we provide cost-effective and timely resolutions in the matters before us.

From my perspective as Chair, there is a glass half-full/glass half-empty aspect to this. The glass half-full is the progress the Board has made on these issues. There is a greater consciousness, and to a certain extent acceptance, of the need for timeliness, practicality, and taking a problem-solving approach to labour relations matters. As well, there are currently exceptional practitioners and examples of this at the Board.

However, that acceptance and practice is by no means universal or uniform and that is the glass half-empty.

The problem has been independently studied and well documented, but one way of gaining insight into it is to recognize that our experience at the Board in respect to such key matters as timeliness and accessibility is to some extent similar to that of the courts. A telling indicator is that in significant instances hearings are taking longer, much longer than they have taken historically or should take. In these instances, the "legality" of the proceedings has overtaken its labour relations, real life context and any measure of practicality.

At its root, it is a problem of culture. The cost, delay and complexity which mark the offending proceedings are a reflection and product of how a legalistic approach and its practices can overwhelm the labour relations nature of what we are dealing with. In terms of that legalism, as Pogo said, "We have met the enemy and he is us".

All of this has been confirmed to us by labour relations practitioners and legal experts who have been generous with their time and views in coming to address us within the Board's Speaker Series[1]. We thank all those speakers, but in particular I wish to note here the comments of the late Chief Judge Hugh Stansfield, who was a tireless, selfless advocate for reform. His comments regarding the need for timely and accessible legal proceedings were poignant and were at least as relevant to an administrative tribunal like the Board as they are to the courts.

Moving back to the glass half-full, we have in fact been attempting to address these issues for some time. It has, however, proven to be a difficult and challenging task.

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[1] In the Speaker Series, the Board invites leading labour relations practitioners and legal experts to give us the benefit of their experiences and candid views on matters relevant to the Board. It is of immeasurable help to us.

The attempt to initiate reform formally started with a letter from the Board to the community in September 2003. Surprisingly, the initiative received little response or support.

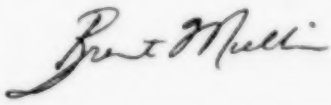
Consequently, the Board then engaged in a transparent public process of consultation on the need for reform. The review was undertaken by Maria Giardini, now Her Honour Judge Giardini. Although made highly accessible through a web-based process, it too received little response. As a result, this process also did not move the matter along.

Accordingly, a further, more specific study of the Board and consultation with the community was undertaken by Lee Doney, a former highly placed and respected public servant. The Doney Report was subsequently submitted to government in respect to the clear matters of public interest identified in it.

Convinced of the merits of the issue and its public interest nature, in 2008 the Legislature passed legislation enabling the Minister of Labour to promulgate regulations for timelines at the Labour Relations Board.

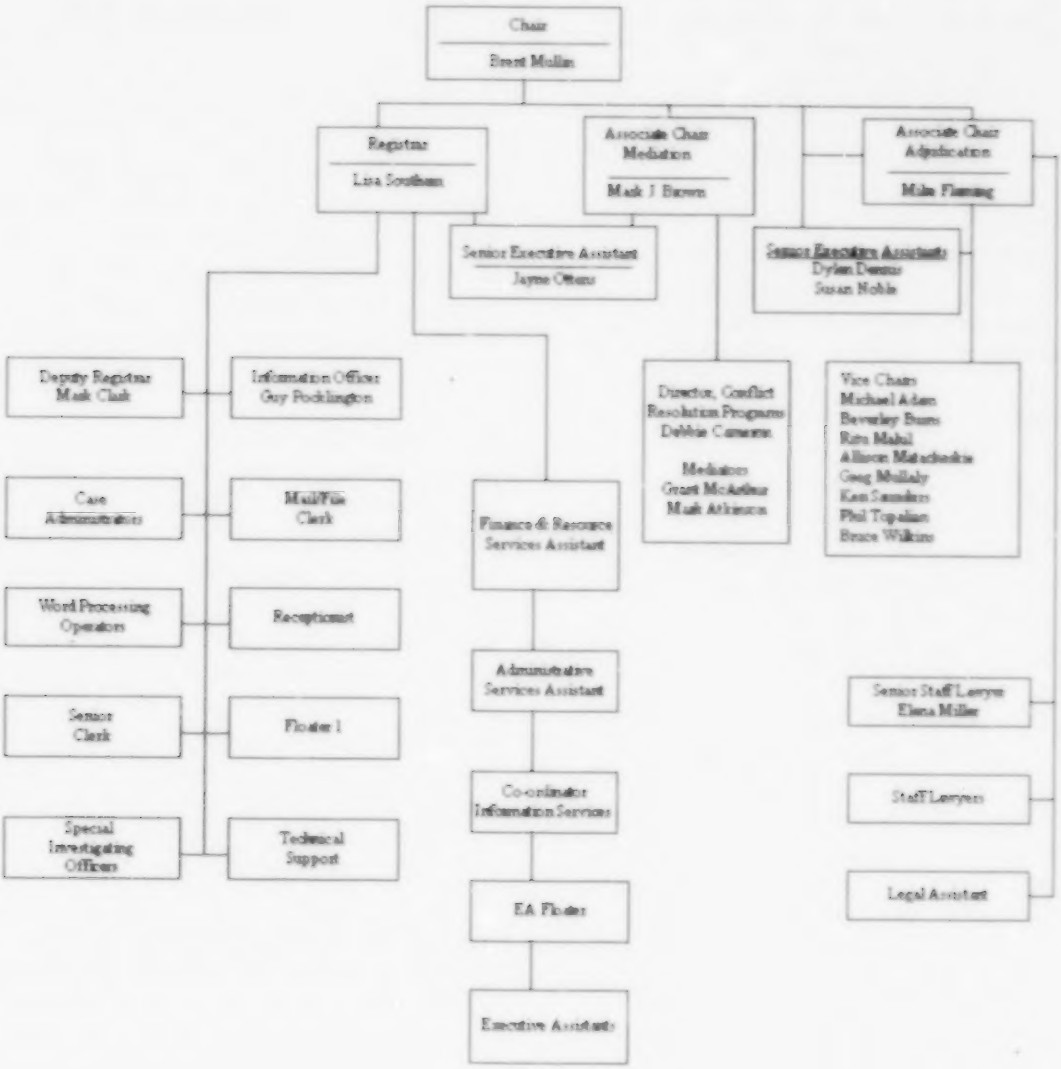
Further to that enabling legislation, the Ministry has undertaken consultation with the community. In that consultation, the Ministry has used a six-month timeline framework, as recommended in the Doney Report. The six months is from case in-the-door to case out-the-door, not six months for the rendering of a decision post-hearing. One of the revelations of the study of delay at the Board was that the delay did not occur only in the rendering of written decisions after the completion of hearings. Rather, the delay was often as much, and in fact often more, in the scheduling of the hearing.

The six-month timeline which has been proposed is specifically designed to force us to change the way we are doing our business. It is designed to require us to conduct labour relations under the Code in a more timely and accountable way. We look forward to drawing upon the experience of the parties and the skills of counsel in ensuring that we move to a more practical and timely, problem-solving focus and approach. We thus look forward to the implementation of this needed reform.



Brent Mullin
Chair

As of December 31, 2008



I. THE BOARD

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with responsibility for labour relations matters under several other statutes.

In carrying out its mandate, the Board must have regard to the manner in which it performs its duties under the Code. These are set out in Section 2:

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
(a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
(b) fosters the employment of workers in economically viable businesses,
(c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
(d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
(e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
(f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
(g) ensures that the public interest is protected during labour disputes, and
(h) encourages the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(1) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. The Chair designates one of the Vice Chairs to act as Associate Chair, Adjudication, one to act as Associate Chair, Mediation and one to act as the Registrar. The Chair, along with the Associate Chair, establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice

Chair(s), and members in accordance with Section 117(5) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chair of Adjudication, Associate Chair of Mediation, and the Registrar report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at proceedings of the Board and on all panels of which the Chair is a member.

C. REGISTRY

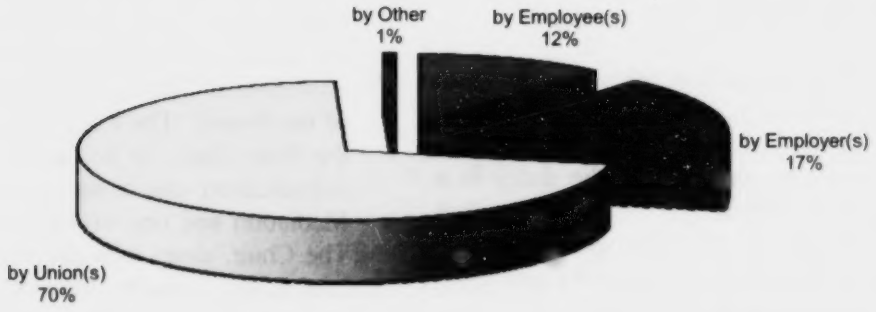
Every application received by the Board is processed through the Registrar's office. Administration and progress of each case is overseen by the Registry until the matter is finally disposed of. Three case administrators, each dealing with a geographic area of the Province, are responsible for initiation of applications and the conduct of files.

Processing of all applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

Legislated time frames, combined with established Board policies and procedures, result in approximately 56 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints require commencement of a hearing within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, Case Administrators are responsible for completing all necessary procedures before files are forwarded to Adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.

2008 Applications and Complaints by Type of Applicant



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their caseload involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 9 of the statistical tables, approximately 67 percent of unfair labour practice complaints and Part 5 complaints referred to SIO's are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party

Similar valuable services are provided throughout the Province by Industrial Relations Officers (IROs) of the Employment Standards Branch of the Ministry of Labour and Citizens' Services. For example, every application for certification or decertification requires a report by an IRO. Such reports are public, with only names and numbers remaining confidential to the Board.

Both SIOs and IROs also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues.

In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them.

In accordance with Section 122(3) of the Code, the Board appointed its first Information Officer, effective February 1, 1994. The Information Officer's responsibilities to date have encompassed two main areas: handling incoming inquiry calls and preparing written material for the public and the labour relations community.

The Information Officer deals with approximately 20 phone calls per day from employers, unions, individual employees and media representatives.

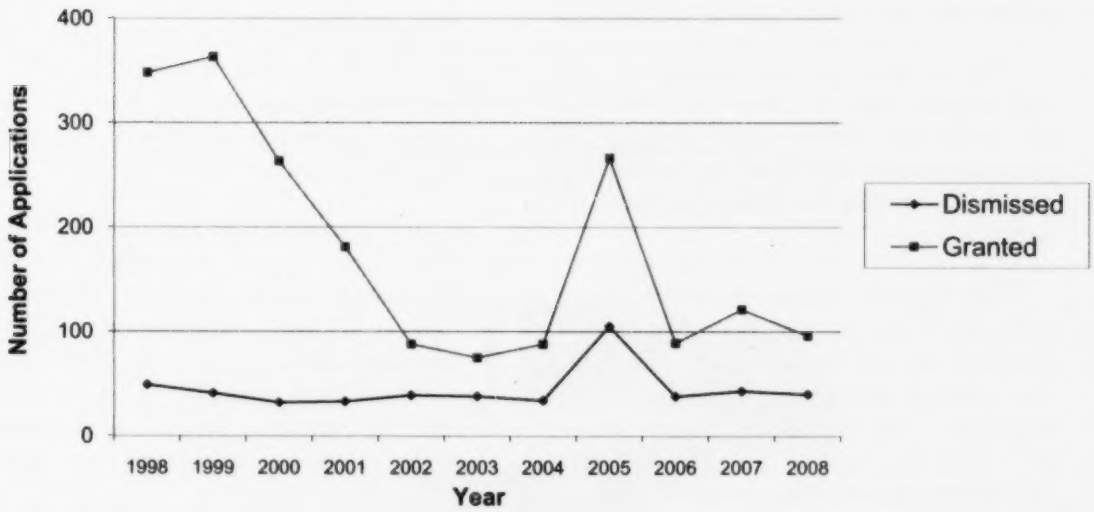
The Board's publications include the *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The day after the Notice and Guide are sent to employers, the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process,* has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual, has been in use since April, 1995.

The Board's website was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The website address is www.lrb.bc.ca.

Certification Decisions



D. COLLECTIVE AGREEMENT ARBITRATION BUREAU

Effective July 5, 2002, and pursuant to the *Labour Relations Code Amendment Act, 2002*, the Collective Agreement Arbitration Bureau was brought under the administration of the Labour Relations Board. Pursuant to Section 83(1) of the Code, the Chair designated the Board's Deputy Registrar, Mark Clark, as Director of the Bureau.

The primary function of the Bureau is to appoint arbitrators where one of the parties seeks an expedited form of arbitration, where the parties seek consensual mediation/arbitration, or where there is a failure to appoint or constitute an arbitration board by one of the parties. In addition, the Bureau also appoints settlement officers to assist the parties in resolving grievances filed under collective agreements. The Labour Relations Board offers the services of its Special Investigating Officers and Mediators as settlement officers to assist the parties in resolving the grievances prior to an arbitrator's appointment by the Bureau.

Since July 5, 2002, applications filed with the Bureau for the appointment of arbitrators and/or settlement officers are processed through the Registry of the Labour Relations Board. The Registry's Case Administrators are generally responsible for the day-to-day administrative processing of the applications, with the Director responsible for the selection/appointment of the arbitrator in each case.

The Bureau, through its Director, must also maintain a register of arbitrators. A Joint Advisory Committee, as appointed by the Minister, must advise the Director on the training and education of arbitrators and settlement officers, research and publication of information about arbitrations, and establishment and maintenance of a register of arbitrators.

The Joint Advisory Committee comprises two representatives of unions, two representatives of employers and two representatives of arbitrators, along with the Director who is the chair of the committee.

E. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the Code. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, 841 cases per year were adjudicated over the past 6 years. A comparison of cases assigned for adjudication and adjudicated for the past several years is set out in the accompanying table. In 2008, the Adjudication Division published 222 decisions. Summaries of some of the

noteworthy decisions can be found in Section III of this Report.

A major portion of the Division's workload continues to be adjudication of expedited applications (including certifications, unfair labour practice and Part 5 applications). During 2008, expedited applications comprised about 71 percent of cases received in the Board's major adjudication areas.

As of December 31, 2008, the Board had 8 Vice Chairs and 3 Staff Lawyers.

As published in the 2007 LRB Annual Report

	2000	2001	2002	2003*	2004	2005*	2006	2007
Cases Assigned for Adjudication	1,365	1,258	860	890	1,141	919	851	919
Cases Adjudicated	1,404	1,293	957	889	936	1,006	781	782
Cases Outstanding at Year End	371	336	239	240	445	358	428	565

* Figures adjusted after publication of *LRB Annual Report* for noted year(s).

Adjusted Figures for 2004 to 2008

	2000	2001	2002	2003*	2004*	2005*	2006*	2007*	2008
Cases Assigned for Adjudication	1,365	1,258	860	890	1,091	823	735	815	636
Cases Adjudicated	1,404	1,293	957	889	922	1,006	781	782	664
Cases Outstanding at Year End	371	336	239	240	409	226	180	213	185

* Figures adjusted after publication of *LRB Annual Report* for noted year(s).

F. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship and collective bargaining information. These and other services are provided under the direction of the Associate Chair, Mediation.

Information about the services available from the Mediation Division can be obtained via the Board's website (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the Code administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

The majority of mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55. In 2008, mediators were appointed to 114 cases under Section 74 and 13 cases under Section 55. Mediators were also involved in 28 cases carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain public sector disputes is also part of the mandate of the Mediation Division.

Conflict Management

During 2008, the Mediation Division continued with its conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design and implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest based problem solving, the use of interest based and rights based processes, and promotion of dispute resolution throughout all levels of the organization. Openness and broad-based participation are encouraged and emphasis is also placed on the importance of feedback and continuous self-evaluation.

Relationship Enhancement

One of the forums for exploring conflict and designing conflict management systems has been the Relationship Enhancement program. The program which was originally designed as a two-day exploratory retreat has been refocused to place greater emphasis on skills in effective communication and interest based problem solving.

In a preliminary assessment, the Mediation Division determines if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including meetings, surveys, and/or focus group discussions. Following this initial assessment, a representative sampling of the stakeholders attend a two or three-day session away from the workplace. Two mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address

and manage the identified conflicts. These strategies take the form of written action plans with specific goals, time frames for achieving the goals and assignment of specific individuals who are responsible for ensuring that action plans are carried out.

Labour Management Consultation Committees

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistance is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of a day, depending on the needs of the parties.

G. ADMINISTRATION

Information Systems

The Board has a Compaq Proliant computer running Windows 2000 as an on-site file and print server. The in-house application running over the network is written in PowerHouse and the information/data collected is stored in an RDB database. Adhoc queries against the data are performed with the Impromptu software. The Board is using the XP Professional software on all its computers.

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, and computer aided research.

Finance and Administration

The Finance and Administration Department is responsible for human resource matters including recruitment, payroll and benefits administration, financial management including budget, accounts payable/accounts receivable and is also responsible for all security and facilities matters.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

II. BOARD MEMBERS AND MEDIATORS

As of December 31, 2008, the Board consisted of the following members:

EXECUTIVE

BRENT MULLIN, *Chair*

Brent Mullin's education includes a B.A. from the University of Victoria, an M.A. from Queen's University at Kingston, Ontario, and an LL.B. from the University of British Columbia. From 1983 to 1992 he practised labour relations, employment and human rights law in Vancouver, British Columbia at Russell & DuMoulin (now Fasken Martineau). From 1992 to 1998 he served as a Vice Chair at the British Columbia Labour Relations Board, then returned to the practice of labour law at Fasken Martineau DuMoulin. In January 2002, he was appointed Chair of the British Columbia Labour Relations Board and in August 2002, he was also appointed Chair of the Employment Standards Tribunal.

MICHAEL FLEMING, *Associate Chair (Adjudication)*

Michael Fleming obtained a B.A. from Simon Fraser University in 1978 and worked with the Ministry of Human Resources as a social worker until 1983. He then worked for the Canadian Farmworkers Union appearing before a number of tribunals and courts on behalf of the members. He received an LL.B. in 1988 from the University of British Columbia and then articled and practised law with the firm of Rush, Crane & Guenther until 1990. From 1990 to his appointment to the Labour Relations Board as Vice Chair in 1997, he was employed by the BCGEU holding several positions and appearing before various tribunals and arbitrators on behalf of the Union and its members. He was appointed as the Associate Chair in the fall of 2002.

MARK BROWN, *Associate Chair (Mediation)*

Mark Brown was appointed to the Board as Vice Chair commencing February 1, 1996. Mark also served as a Board Mediator commencing in March of 2001. In September 2002, as part of the Board's restructuring initiative, Mark was appointed Manager Mediation Services. In September 2003, Mark was appointed Registrar as well. In June 2006, Mark resigned from the Board; however, he continued to work part-time under contract. In February 2008, Mark was appointed Associate Chair, Mediation.

LISA SOUTHERN, *Vice Chair and Registrar*

Lisa Southern received her law degree from Osgoode Hall Law School at York University in 1996. She was called to the British Columbia Bar in 1997 and practiced at Russell & DuMoulin (now Fasken Martineau DuMoulin), specializing in labour, employment and human rights issues. In 1997 she joined Forest Industrial Relations Inc. as a labour relations advisor. Lisa provided employment, labour relations and human rights advice for the forest industry umbrella

organization, established to administer and bargain the collective agreement governing member companies and employees certified with IWA-Canada. In 1998 she returned to practice law in the areas of labour, employment and human rights at Fasken Martineau DuMoulin. From 2003 to 2006, she served as a Vice Chair at the Board. She was appointed as Registrar in 2006.

VICE CHAIRS

MICHAEL ADAM, *Vice Chair*

Michael Adam received a B.Comm (Honours) (Industrial Relations) from U.B.C. in 1989. He also holds a Conflict Resolution Certificate from the Justice Institute of B.C. and is a Certified Human Resources Professional. After working as a Research Analyst for the Hospital Employees' Union from 1989 to 1991, he returned to U.B.C. and completed his LL.B. in 1994. Following law school, he clerked at the B.C. Supreme Court and later articled at Bolton and Muldoon before being called to the Bar in March 1996. From 1996 to 1999, he worked as an associate at the municipal law firm of Lidstone Young Anderson, handling labour and employment matters for local governments. From 1999 to 2001, he worked at Forest Industrial Relations Ltd., providing contract administration, training and labour arbitration services to FIR members. In 2001, he joined Alexander Holburn Beaudin & Lang as part of the Labour and Employment Practice Group, becoming a Partner in 2003. In 2005, he joined Weyerhaeuser as a Labour Relations Director, with responsibility for negotiating and administering labour agreements in timberlands, wood products, containerboard packaging, pulp and paper and distribution throughout Washington, Oregon, California and Hawaii. Mike was appointed as a Vice Chair of the Labour Relations Board in May 2007.

BEVERLEY BURNS, *Vice Chair*

Beverley Burns obtained a Bachelor of Arts (Hons. History) in 1982 and a Bachelor of Laws in 1987 from the University of Western Ontario. She also received a Master of Laws (Alternative Dispute Resolution) from Osgoode Hall Law School in 1998. She has been practicing law since she was called to the Bar in 1989. Since then, she has held various positions including: associate at McMillan Binch, in-house counsel to the Airline Division of CUPE, Executive Assistant to the Deputy Minister of Labour-Management Services at the Ontario Ministry of Labour, in-house counsel to Woolworth Canada Inc. and Director of Labour Relations for WorkSafeBC. Beverley was appointed as a Vice Chair of the Labour Relations Board in May 2007.

RITU MAHIL, *Vice Chair*

Ritu Mahil received BA, LL.B., and M.P.A. degrees from the University of Victoria. Ritu worked at the Labour Relations Board in 2000 on a special project regarding the Duty of Fair Representation complaint process. She summered at Victory Square Law Office and articled at Fiorillo Glavin Gordon, a labour law firm exclusively representing unions. She was called to the Bar in 2002. Ritu has been an instructor with the Labour Studies Programme at Capilano College where she instructed union stewards, business agents, and executive officers in various labour law and labour relations matters. She has also presented at a number of workshops through Lancaster House. Ritu was in-house legal counsel to the Health Sciences Association from 2002 to May 2007. Ritu was appointed as a Vice Chair in May 2007.

ALLISON MATACHESKIE, *Vice Chair*

Allison Matacheskie received her LL.B from the University of Ottawa in 1989. She articled in British Columbia with the firm of Stevenson, Norman, and practiced labour law exclusively representing unions. She was called to the British Columbia Bar in 1990 and remained with Stevenson, Norman until 1992 when she left to practice criminal law as crown counsel. After two years prosecuting at the provincial court level, she returned to labour law and joined the firm of Victory Square Law Office, a firm which exclusively represents unions. In 2001, she joined the firm of Granville and Pender Labour Law Office. In October 2002, she accepted a temporary contract with the Ministry of Attorney General as a special assignment prosecutor. She was appointed as a Vice Chair in January 2004.

GREG MULLALY, *Vice Chair*

Greg Mullaly took degrees in philosophy at Dalhousie University (B.A. (Hons.), 1975) and the University of Oxford (B. Phil., 1978) before returning to Dalhousie University to study law. He received an LL.B. in 1981 and then practiced labour law for nineteen years, most recently at Victory Square Law Office. Greg was appointed as a Vice-Chair in June 2000.

KEN SAUNDERS, *Vice Chair*

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Law degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996, he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000, Ken was appointed as a Vice Chair of the Labour Relations Board.

PHILIP TOPALIAN, *Vice Chair*

Philip Topalian received a law degree from the University of British Columbia in 1977 and practiced law from 1978 to 1980. Philip was appointed to the position of Labour Relations Officer in the Provincial Government in 1989, holding the position of Senior Labour Relations Officer with the Public Service Association since 1995. Philip has extensive experience in negotiations as well as appearing as counsel before a variety of employment related tribunals. He was appointed as a Vice Chair in October 2005.

BRUCE WILKINS, *Vice Chair*

Bruce Wilkins was introduced to labour relations while studying at the University of Toronto for his B.A. in philosophy. While attending the University of Toronto and working at the library, he became a steward and then the Chief Steward of CUPE Local 1230. After obtaining his B.A. he went to law school and graduated from Queens University Law School in 1997. He articled at Victory Square Law Office, a firm which exclusively represents unions, and was called to the Bar in 1998. He worked for two years as Crown Counsel in traffic and criminal prosecutions. He returned to the labour relations community as in-house counsel for the Health Sciences Association of British Columbia, representing the union in arbitrations, Labour Relations Board proceedings and professional discipline hearings. He was appointed as a Vice Chair in May 2007.

MEDIATORS

DEBBIE CAMERON, *Mediator and Director of Conflict Resolution Programs*

Debbie Cameron graduated from the Caribou College Registered Nursing program in 1976. In 1981 she joined the B.C. Nurses' Union, initially as a Labour Relations Officer, then as Negotiations Officer, and in 1992 became the Co-ordinator of Hospitals and Organizing. As Hospitals Co-ordinator, she was responsible for negotiations and contract administration of all hospital sector collective agreements covering more than 17,000 employees. Debbie joined the Board as a mediator in 1994. Debbie has a Certificate in Conflict Resolution from the Justice Institute of British Columbia, a Certificate in Intercultural Studies from the University of British Columbia, a Masters degree in Conflict Analysis and Management from Royal Roads University, and recently completed the Provincial Instructor Diploma program at Vancouver Community College.

MARK ATKINSON, *Mediator*

Mark Atkinson was a staff representative with the Hospital Employees' Union from 1981 to 1995 when he joined the Labour Relations Board as a Mediator. In 2004, Mark joined Federal Mediation and Conciliation Services as a Mediator. Mark was also employed by the Interior Health Authority as the Associate Director of Human Resources prior to going into a private mediation/arbitration practice for three years. Mark rejoined the Board in January 2008.

GRANT McARTHUR, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Grant joined B.C. Rail in 1986, where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

III. HIGHLIGHTS OF BOARD DECISIONS

In 2008, the Adjudication Division published 222 numbered decisions. The following are summaries of some of the more noteworthy decisions issued during the year. These summaries are provided for interest only, and they do not constitute legal or authoritative interpretations of the decisions in question. The full text of these and other Board decisions are available on its website (www.lrb.bc.ca).

City of Vancouver, BCLRB No. B12/2008 (Leave for Reconsideration denied, BCLRB No. B65/2008) — In upholding a s. 99 review of an arbitration award, the Board held that a consistent, long-standing past practice can establish an estoppel. Whether a particular long-standing practice is sufficient to amount to an unequivocal representation for purposes of estoppel is a question of fact for arbitrators to assess in light of all the relevant circumstances, including the nature of the practice and its content.

Mainroad South Island Contracting Ltd., BCLRB No. B25/2008 (Leave for Reconsideration of BCLRB No. B192/2007) – The test for permissible picketing includes whether the site or place of picketing is one where the employees would perform work, but for the strike. Where road maintenance employees would be performing work on roads and highways throughout a geographic area but for a strike, and work locations are not fixed but always changing, all roads and highways in the geographic area may become sites or places of permissible picketing. The right is to picket peacefully and lawfully at the side of the road; it does not include or imply a right to impede traffic or obstruct the road.

Coastland Wood Industries Ltd., BCLRB No. B26/2008 (Leave for Reconsideration of BCLRB No. B184/2007) – Where an employer's contract to perform work at a location has been permanently terminated, that location ceases to be a site or place where a striking employee of the employer "performs work" within the meaning of Section 65(3) of the Code. Accordingly, it ceases to be a location of permissible picketing. The permanent nature of the termination of the contract distinguishes this case from situations where a client of a struck contractor employer merely suspends, or temporarily "terminates", a contract because of the strike, with the intention of reviving the contract once the strike is over.

McDonald & Ross Construction Ltd., BCLRB No. B27/2008 (Leave for Reconsideration of BCLRB No. B228/2007) – Where an employer signs a settlement agreement whereby it agrees to voluntary recognize a union for a unit of its employees, the Board has a discretion as to whether it will review the appropriateness of the voluntarily recognized bargaining unit. In this case, the Board declined to review the appropriateness of the unit. The Employer had not shown that it had attempted to abide by the terms of the settlement agreement but had been unable to do so because of the inappropriateness of the unit.

Space Buddies Productions Inc., BCLRB No. B29/2008 – Voluntary recognition may be the standard manner of organization in the film production industry, but it does not preclude a unit from being granted certification under the Code where the employer has not entered into a voluntary recognition with any union. Here, the Employer was not unionized and had no relationship with ACFC West. In these circumstances, there was no basis for delaying the processing of the Film Council's application for certification.

Pacific Newspaper Group Inc., BCLRB No. B46/2008 (Leave for Reconsideration of BCLRB No. B24/2007) – Where a union has bargained the right to refuse to perform work

in accordance with a hot declaration into the collective agreement, a refusal to perform work in accordance with a hot declaration is not an illegal strike. However, the collective agreement right is regulated by Section 70 of the Code. Under Section 70 the Board may declare a hot declaration void for all purposes or unenforceable in specified circumstances or for a specified period of time. Whether the Board will do so in a given application depends on a weighing and balancing of the competing interests in the particular circumstances of the case.

Island Timberlands Limited Partnership, BCLRB No. B50/2008 (Leave for Reconsideration denied, BCLRB No. B76/2008) – An application under Section 78(1) of the Code for a last offer vote must be made "before the commencement of a strike or lockout". Accordingly, an application is untimely if it occurs after a strike or lockout has commenced, even if at the time the application was made there was no strike or lockout activity.

Coast Mountain Bus Company Ltd., BLCRB No. B73/2008 – The Board has jurisdiction over "persons" who engage in picketing in contravention of the Code. It is not a requirement that the picketer be a union member or an employee of the employer being picketed. If the picketing is in respect of a dispute or matter to which the Code applies, then it is picketing over which the Board has jurisdiction. Regulation under the Code of picketing in respect to a labour matter or dispute by persons such as the individual respondent (who was not an employee of the applicant Employer) is not contrary to the *Charter of Rights and Freedoms*. A declaration was made that the individual respondent and persons unknown had picketed the Employer's Burnaby Transit Centre in contravention of Section 67 of the Code.

Board of School Trustees of School District No. 39 (Vancouver), BCLRB No. B77/2008 – It is a fundamental requirement that a "trade union" within the meaning of the Code be a "viable organization", meaning that it has to have rules of organization, be they by-laws or a constitution. Here, Local 1995 only had a Charter from CMAW with a reference to the CMAW Constitution, but that Constitution had no provisions that applied to the formation, creation or operation of local unions. This was insufficient evidence to demonstrate that Local 1995 was a viable organization for purposes of trade union status under the Code.

Gateway Casinos & Entertainment Inc., BCLRB No. B81/2008 (Leave for Reconsideration denied, BCLRB No. B131/2008) – The BCGEU alleged that the Employer had committed unfair labour practices by, among other things, sprinkling managerial duties on its supervisors for the purpose of ensuring that they could not unionize. The Board found that the managerial duties were not merely sprinkled but were assigned for *bona fide* business reasons. However, the Board further found that the Employer had not actually required its supervisors to perform the assigned managerial duties. As they were not actually performing the duties of a manager, they were not managers within the meaning of the Code, and therefore were not excluded from unionization.

Gateway Casinos and Entertainment Inc., BCLRB No. B88/2008 – The Employer applied for a stay of an original decision (BCLRB No. B81/2008) which ordered the counting of a representation vote. The stay was not pending an application for reconsideration of the original decision but rather pending a determination of various injunction applications by the British Columbia Supreme Court. The Board found that the Employer had not established irreparable harm if the vote were counted and a certification granted, as certification orders can be varied or cancelled on reconsideration. Accordingly, the stay application was dismissed on its merits. However, as the Employer had indicated that it would be making application to the Court to stay the Board's decision, the Board ordered that the ballots not be counted for a period of two weeks or until the Court decided the Employer's stay application, whichever was

sooner. [The Court dismissed the Employer's stay application: *Gateway Casinos LP*, 2008 BCSC 821.]

Phil Labey and James MacAlister, BCLRB No. B93/2008 (Leave for Reconsideration of BCLRB No. B30/2008) – The Union was found to have breached the Code in expelling two members for "dual unionism" and imposing a $20,000 "re-initiation fee" on them. The circumstances were that they had sought and obtained work which required them to join another union, because they lacked work. There was no evidence they were internal dissidents or elected to join another union for the purpose of unseating Local 170. Local 170 argued that, regardless of their subjective motivation, objectively, their joining a rival union harmed Local 170. However, the Board found that in the circumstances the expulsion was retaliatory rather than defensive.

Certain Employees of C. & O. Holdings, BCLRB No. B96/2008 (Leave for Reconsideration of BCLRB No. B66/2008) – The Board's general policy that applications for partial decertification may not be made during the collective bargaining process (from the date the notice to bargain has been filed to the date of ratification) is subject to a recognized exception where collective bargaining is no longer occurring. Here, the application came before the date of ratification, but at a point where the Union had delayed ratification to pursue a policy grievance, and the parties were no longer engaged in the bargaining process. Accordingly, the Board made an exception to its general policy and permitted the application to proceed.

Insite Housing, Hospitality and Health Services Inc., BCLRB No. B107/2008 – BCGEU applied to be certified for the Quesnel location of the Employer's assisted living homes. The Employer argued that the only appropriate bargaining unit was an all-employee unit covering all of the Employer's locations throughout the province. Weighing all four *IML* factors, the Board found that the unit applied for was appropriate. While the Employer had a centralized business structure, the large geographic distance separating the Quesnel location from other operations and the fact that there was no functional integration between locations meant that it was possible to draw a rational and defensible line around the unit in question.

Best Facilities Services Ltd., BCLRB No. B112/2008 (Leave for Reconsideration denied, BCLRB No. B149/2008) – Where a union applies for and obtains certification pursuant to Section 19 of the Code, Section 27 provides that the collective agreement binding on the unit remains in force. Accordingly, the Union cannot subsequently insist upon bargaining a fresh collective agreement on the basis that it disputes the validity of the existing collective agreement. If it wished to take the position that the existing collective agreement negotiated between the Employer and the previous union was not valid, it should have applied for certification under Section 18.

PCL Constructors Canada Inc., BCLRB No. B120/2008 – An application that the Chair disqualify himself from hearing a matter on the basis of bias against the Union was dismissed. The Board noted the law is clear that decision-makers should resist the "natural tendency" to simply step aside in the face of a bias objection. Adjudicators have a duty to hear cases to which they have been assigned, and to decide bias objections on the basis of established legal principles. Applying those principles, the Board found the test for bias was not met, and accordingly the application for disqualification was dismissed.

Island Timberlands LP, BCLRB No. B121/2008 (Leave for Reconsideration of Order dated July 24, 2007 and BCLRB No. B179/2007) – The issue was whether the Steelworkers' picketing of a dock owned by the Employer, a provincially regulated forestry company, was provincially or federally regulated. The picketing was in respect of a provincially-regulated strike, but had the effect of persuading employees of a federally-regulated contractor to cease loading the Employer's logs onto a ship anchored near the

dock. The Board held the picketing could be prohibited under the Code because to do so would not affect the vital and essential part of a federal undertaking, nor bear upon the federal undertaking in what makes it specifically of federal jurisdiction.

United Brotherhood of Carpenters and Joiners of America et al., BCLRB No. B125/2008 – UBCJA, BCPC and CMAW are parties to a Board endorsed agreement which reflects their resolution of a number of long-standing issues and litigation between them. One of the components of the Agreement is an agreement to share the representation of the craft of carpentry in B.C. Another component is a dispute resolution mechanism for disputes relating to share of the craft. Such a dispute arose with respect to represent the craft in the context of the Kitimat Modernization Project. After the parties were unable to resolve the issue informally, this decision provided a resolution. The decision also notes that the current situation in relation to the project raises concerns about the long-term viability of sharing the craft between two carpenters unions.

Islands West Manufacturers Ltd., BCLRB No. B141/2008 (Leave for Reconsideration of BCLRB No. B44/2008) – The Employer sought reconsideration of an original panel's determination of bargaining unit appropriateness and its exercise of discretion to remedially certify the Union. In rejecting the Employer's application, the reconsideration panel noted first that, absent palpable and overriding error, findings of fact are not reviewed on reconsideration. Second, while the Board will review original decisions for consistency with Code principles, the focus is on error with respect to the interpretation and application of the law and policy in the Code. The Board declined to intervene on reconsideration in this case as it found the interferences and conclusions that had been draw from the facts in this case fall within the range of possibilities which could be reached by an original panel, in exercising its judgment under the proper law and policy of the Code.

Insite Housing – Hospitality and Health Services Inc., BCLRB No. B156/2008 – HEU applied to be certified to represent employees at the Employer's Langley location. The Employer and BCGEU, which was certified to represent employees at the Employer's Quesnel location, opposed the application. HEU argued the unit was appropriate because the Employer has a different contract at each of its locations. It submitted that in the contract service industry, the model is certification on a site-by-site basis, with bargaining units mirroring the commercial contractor between the employer and the third parties with whom they have service contracts. Noting the presumption against multiple bargaining units applies in the context of the contract service provider sector, the Board found HEU had not rebutted the presumption in this case. Here, the Employer did not operate on the basis of separate profit centres for each service contract. Rather, it has a centralized administrative and accounting structure. Given this type of structure, the Board found the different terms of the various service contracts to be of limited significance. The Board found HEU had not persuasively addressed the concerns about proliferation and instability, and accordingly the unit was found to be inappropriate and the application for certification therefore dismissed.

EllisDon Corporation, BCLRB No. B171/2008 (Leave for Reconsideration denied, BCLRB No. B14/2009) – An application for certification under Section 19 of the Code was found to be time-barred because it was made less than 22 months after a previous raid application had been dismissed as untimely. The Board rejected the argument that the earlier decision was not a decision "on the merits" within the meaning of Section 19(2).

Paladin Security Group Ltd., BCLRB No. B174/2008 – When an IRO reports that a union applying for certification appears to lack the requisite threshold support, the Board may nevertheless order the disclosure of the names of the employees in the proposed units in some circumstances. Here, the HEU had provided specific reasons why the IRO's report should

be questioned and sought certain employee scheduling information from the Employer which the Employer had provided to the IRO, and which was relevant and necessary to a proper determination of the issue of whether the Union enjoys threshold support. In those circumstances, the Board ordered the Employer to provide the employee scheduling information to the Union which the Employer had provided to the IRO.

AMPTP et al., BCLRB No. B179/2008 – In 2008, the Board was directed to conduct a Section 41 review of the film industry. Further to that process, the Associate Chair, Adjudication met informally with the parties to solicit their views regarding the process and key or central themes it should address. After some discussions, it became evident to the Associate Chair that interim measures were needed to address stability concerns relating to the potential for multiple strike votes in the upcoming round of bargaining. After inviting and considering the parties' submissions, the Board set out in this decision five interim measures to be implemented by the parties on or before December 5, 2008.

Pro Vita Care Management Inc. BCLRB No. B187/2008 (Leave for Reconsideration of BCLRB No. B124/2008) – A bargaining unit in the health care contract industry was found to be inappropriate for bargaining because the Board's general approach will be to issue separate certification reflecting the commercial contracts. This approach applies to the health care contract service provider industry, not other industries where the parties have been able to make their collective bargaining structures which encompass more than one commercial contract work. It also does not prevent the parties from ultimately developing the structure of their collective bargaining through agreement and cooperation to achieve greater convenience and efficiency, e.g., moving to bargaining at one table.

IV. COURT DECISIONS

1. ***Construction & Specialized Workers' Union, Local 1611 v. British Columbia (Labour Relations Board)***, 2008 BCSC 51 – The petitioner sought judicial review of Board decisions on the basis that it had been denied natural justice and a fair hearing when the original panel refused to allow the union to call two witnesses, and when the reconsideration panel allegedly considered facts that did not exist in arriving at its decision to uphold the original decision with respect to the validity of a last offer vote.

   Under Section 58(2)(b) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, the question was whether, in all the circumstances, the Board had acted fairly. Noting that the requirements of procedural fairness and natural justice are flexible, the Court held that the reconsideration decision did not err in concluding that the Union was not denied natural justice or procedural fairness when the original panel denied its application for two witness summonses. The reconsideration panel also did not act unfairly in the matter and reasoning by which it dismissed the union's argument relating to the last offer vote.

   In the result, the petition for judicial review was dismissed.

2. ***Victoria Times Colonist v. Communications, Energy and Paperworkers***, 2008 BCSC 109 (appeal filed) – The petitioner sought judicial review of Board decisions on the basis that it was patently unreasonable for the Board to conclude that, when the respondent unions and their members refused to handle certain advertisements due to a "hot declaration", it did not amount to a strike under the Code.

   The Court noted that the petitioner's arguments on whether the conduct of the respondent union and its members constituted a strike were in large measure identical to its submissions on this issue to the Board. However, the Court found the Board's rejection of these submissions was not patently unreasonable. The Court further found that some of the petitioner's submissions were an invitation to review the Board's decisions on a standard of correctness rather than patent unreasonableness.

   With respect to an alternative argument that the reconsideration decision had been made in an unfair manner because it did not address the substance of the petitioner's arguments that the impugned workplace conduct constituted a strike, the Court held that, read in light of the original decision, the reconsideration panel's reasons were "cogent and sufficient" and there was no denial of natural justice or breach of procedural fairness.

   In the result, the petition for judicial review was dismissed. An appeal was filed and is scheduled to be heard April 6 – 7, 2009.

3. ***Northstar Lumber v. United Steelworkers of America, Local No. 1-424***, 2008 BCSC 214 (appeal filed) – The petitioner sought judicial review of Board decisions upholding an arbitration award under s. 99 of the Code. The petitioner sought direct review of the award by the Court itself or, alternatively, a finding that the Board's decisions upholding the award were patently unreasonable.

   On the issue of whether the Court had jurisdiction to review the award directly, the Court held it was bound by the decision of the Court of Appeal in *Stark v. Vancouver School District No. 39*, 2006 BCCA 124 that the Supreme Court has no jurisdiction to review arbitration

awards in light of various provisions of the Code. The Court further held that, if it had jurisdiction to review the award, it would not find the award to be patently unreasonable. The Court further found that the Board's decisions upholding the award were not patently unreasonable.

In the result, the petition for judicial review was dismissed. An appeal was filed and heard before a five-member panel of the Court of Appeal on January 14 – 15, 2009. Judgment is under reserve.

4. ***Speckling v. British Columbia (Labour Relations Board)***, 2008 BCCA 155 – The appellant appealed the dismissal of his petition for judicial review of decisions of the Board as untimely under s. 57 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("*ATA*"). The chambers judge had found that the 60-day time limit for filing a petition for judicial review applied where the petition was filed after the date the *ATA* came into effect with respect to Board decisions, but the decisions for which review was sought were rendered prior to that date.

The Court of Appeal agreed with the chambers judge that the time limit would apply in these circumstances. The Court of Appeal noted that s. 57 includes a discretionary ability to relieve against the 60-day time limit in appropriate circumstances, and accordingly, it found it was not unfair to apply the time limit to petitions for judicial review of decisions rendered prior to the date the *ATA* came into effect.

The Court further found that the chambers judge did not err in declining to exercise his jurisdiction under Section 57(2) of the *ATA* to relieve against the time limit in the circumstances of this case.

In the result, the appeal was dismissed.

5. ***United Food and Commercial Workers' Union, Local 1518 v. British Columbia Labour Relations Board and Wal-Mart Canada Corp.***, 2008 BCCA 231 – The appellant appealed the dismissal of their petition for judicial review of a Board reconsideration decision. The issue on appeal was whether the Board breached rules of natural justice by circulating a draft decision and holding a full Board meeting to discuss that decision before appointing a panel.

The Court of Appeal held the chambers judge was correct in finding that the rules of natural justice had not been breached in the circumstances. Those circumstances included the fact that, while formal assignment to the Chair did not take place until June 2006, the chambers judge found that the matter had effectively been referred to the Chair well before the March 2006 policy meeting.

In the result, the appeal was dismissed.

6. ***Gateway Casinos LP v. B.C. Government and Service Employees' Union***, 2008 BCSC 821 – The petitioners sought an injunction staying Board proceedings, including the counting of ballots in a representation vote pursuant to a Board decision on an application for certification, pending the outcome of the petitioners' civil suit against the respondent union for trespass during the organizing drive.

The respondent union and the Board argued that the Board has exclusive jurisdiction with respect to certification under the Code, and under s. 137 the Court must not make an order enjoining or prohibiting an act or thing in respect to an application for certification. The petitioners responded that the Court has jurisdiction over trespass.

The Court held that the issue at the heart of the petitioners' applications relates to

a labour-management dispute, and that the dispute therefore fell within the Board's exclusive jurisdiction under the Code. The Board in a previous decision (*R.C. Purdy Chocolates*, BCLRB No. B30/2002) had shown itself able to fashion a remedy in similar circumstances, and the petitioners had not yet sought to have the Board exercise its discretion to stay its own proceedings pending the outcome of the action for trespass.

In these circumstances, the Court declined to grant an interim injunction and stay of the Board's proceedings. .

7. ***NIL/TU,O Child and Family Services Society v. B.C. Government and Service Employees' Union***, 2008 BCCA 333 (leave to appeal to the Supreme Court of Canada granted: [2008] S.C.C.A. No. 451) – The union appealed the granting of the employer's petition for judicial review of Board decisions which had found that an application for certification fell within provincial rather than federal jurisdiction. The union argued that the Board's decisions finding provincial jurisdiction were correct and should be restored on appeal, along with the Board's certification order.

The Court of Appeal granted the union's appeal, finding that applying the provincial *Labour Relations Code* to the employer, a First Nations social service agency, would not regulate "Indians *qua* Indians". The Court found that nothing in the provincial legislation delegating to the employer the provision of certain social services to certain First Nations clientele in the province, nor the manner in which the employer provided those services, took the employer outside of provincial jurisdiction with respect to its labour relations.

In the result, the appeal was allowed and the Board's certification order was reinstated. Leave to appeal to the Supreme Court of Canada was sought and has been granted: [2008] S.C.C.A. No. 451.

8. ***McDonald and Ross Construction Ltd. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 and British Columbia Labour Relations Board***, 2008 BCSC 1212 – The petitioner sought judicial review of certain Board decisions on the basis that they were patently unreasonable as the Board had allegedly failed to exercise its jurisdiction under s. 139(i) to determine bargaining unit appropriateness.

In its decisions, the Board had granted the union's application for a declaration that the employer was bound by the terms of a settlement agreement it had reached with the union. In doing so, the Board rejected the employer's argument that the agreement was not binding because the parties had agreed to an inappropriate bargaining unit.

The parties agreed that the matters decided by the Board fell within its exclusive jurisdiction. The petitioner employer alleged the Board's decisions were patently unreasonable because the Board was required to decide bargaining unit appropriateness in the circumstances. However, the Court found that there was no statutory requirement to decide . the appropriateness of a voluntarily recognized bargaining unit. The Court further held that it was not patently unreasonable or contrary to the Code for the Board to require parties to adhere to a settlement agreement that has not been reviewed for appropriateness.

In the result, the petition for judicial review was dismissed.

9. ***British Columbia Ferry and Marine Workers' Union v. British Columbia***

Ferry Services Inc., 2008 BCSC 1464 – The petitioner sought judicial review of Board decisions upholding an arbitration award which found that the employer was entitled to suspend two employees for insubordination when they refused to answer certain questions during an employer investigation of a serious workplace incident.

The judge noted that the standard of review was patent unreasonableness, and that the decision being assessed for patent unreasonableness was the Board's s. 99 decision reviewing the arbitration award, not the award itself. The judge found that the Board's decision was not patently unreasonable (or unreasonable, if the common law standard of reasonableness applies).

Among other things, the judge noted that the scope of an employee's right to remain silent without fear of discipline for cause is a matter of law and policy under the Code, within the exclusive jurisdiction of the Board. The judge found that the reasonableness of the Board's decision had to be assessed in light of the arguments that were made to it, not in light of arguments that were raised for the first time on judicial review.

The judge further noted that the Board's decision was based on the extraordinary circumstances of the case, and did not suggest that any business interest, however mundane or marginal, would be sufficient to negate the general rule that an employee's silence, standing alone, does not give rise to just and reasonable cause for discipline.

In the result, the petition for judicial review was dismissed.

10. ***Grant v. British Columbia (Labour Relations Board)***, 2008 BCSC 1576 (appeal filed) – The petitioner sought judicial review of Board decisions dismissing his Section 12 duty of fair representation complaint against his union. The issue was whether the Board's decisions were patently unreasonable. On review of the record and the arguments of counsel, the Court concluded that the decisions dismissing the petitioner's complaint against his union were not patently unreasonable.

In the result, the petition was dismissed. A notice of appeal has been filed.

11. ***Allied Hydro Council v. Construction Maintenance and Allied Workers Bargaining Council, Local 2300***, 2008 BCSC 1660 – The petitioner council of trade unions (AHC) sought judicial review of a Board reconsideration decision which varied AHC's poly-party certification under s. 142 of the Code. The variance replaced the British Columbia Provincial Council of Carpenters (BCPC) with the Construction, Maintenance and Allied Workers Bargaining Council (CMAW) as a constituent member of the AHC, without the consent of the AHC's other constituent members.

AHC argued that the Board did not have jurisdiction to vary its certification to replace a constituent member without the consent of the other constituent members or, alternatively, if it had jurisdiction, the Board's decision to do so in the circumstances of this case was patently unreasonable. It also argued that the decision was contrary to the *Charter of Rights and Freedoms*, an argument not made before the Board.

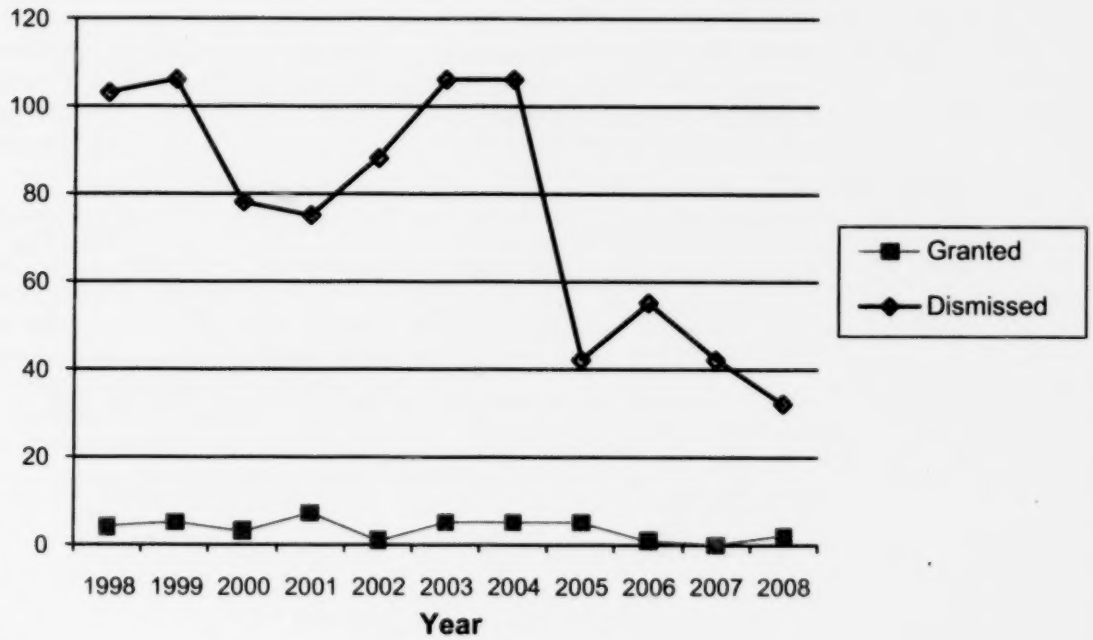
Relying on the Court of Appeal's decision in *UBCJA, Local 527 v. Labour Relations Board*, 2006 BCCA 364, the Court concluded that the interpretive issue with respect to s. 142 in this case was a matter falling within the Board's exclusive jurisdiction to decide and therefore reviewable on a standard of patent unreasonableness, not correctness.

The Court further found that the Board's decision was not patently unreasonable. There was a rational basis for the reconsideration decision, which the Board reached through careful and logical analysis.

The Court also rejected an argument that the Board had breached the rules of natural justice and procedural fairness in the course of making the reconsideration decision. Finally, the Court held that it would not consider the *Charter* argument raised for the first time on judicial review, as the petitioner had provided no satisfactory explanation as to why the constitutional question had not been raised before the Board.

In the result, the petition for judicial review was dismissed.

Duty of Fair Representation Decisions



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EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of in 2008. In some cases, statistics from 2007 and other years are provided for comparative purposes.

As of 2005 Table 1 of the *LRB Annual Report* includes applications and complaints "Filed Previous" (Filed in Previous Year) and "Remainder Active" (Open at Year End). These figures help provide an overview of the active or current caseload at the Labour Relations Board.

Statistical Tables Definitions:

- **Application / Complaint**: a section or subsection of the Labour Relations Code. A 'case' may be comprised of more than one application or complaint (section);
- **Filed in Previous Year**: count of applications / complaints received sometime prior to the report period and not yet disposed of at January 1 of the report period;
- **Filed in Current Year**: count of applications / complaints received in the report period;
- **Disposed of - Current**: count of applications / complaints with a final disposition in the report period (includes applications / complaints Not Proceeded With, Withdrawn, Settled, Granted, Dismissed and Other);
- **Open at Year End**: count of applications / complaints received sometime prior to the report period and open (not yet disposed of) at the end of the report period. These applications / complaints may be counted as Filed in Current Year or Filed in Previous Year, as applicable (same as column heading for 2005-2007 reports: Remainder Active).

A number of other changes have been made during past years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for reference (in date order with most recent appearing first).

Requests for Appointment of a Facilitator

Applications to appoint a Facilitator under Section 53 are counted as applications for the first time in the 2008 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications have been processed by the Board/Council prior to 2008 but have not appeared in the Annual Report Tables until now.

Changes in Report Tables

Tables available in previous years regarding vote information for representation applications, details of Part 5 applications, and details of Mediation Officer appointments were taken out of the Annual Report in 2004. Certification cancellation information (s.33(2)) was added to tables 1A, 1B, 2 and 2A as of 2004. Other information previously included in Table 1 footnotes has been moved to related tables for ease of reference and readability.

Applications for Collective Agreement Arbitration

The Labour Relations Board assumed the processing of these applications from the Collective Agreement Arbitration Bureau in mid-2002; however, due to technical and procedural considerations, applications under Sections 86, 87, 104 and 105 ("CAAB" applications) were counted in the Board's statistics only if received on or after January 1, 2003 (i.e., any 'outstanding' CAAB applications at the end of 2002 are not included in the Board's statistics).

Requests for Appointment of a Mediator

Applications to appoint a Mediator under Section 74 were counted as applications for the first time in the 2002 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications were processed by the Board/Council prior to 2002 but appeared only in the "Analysis of Mediator Appointments" Table for those years.

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From

1989 to 1996, complaints under each particular sub-section were counted as one complaint.

In 1996, the Board has decided to revert to the pre-1989 method of counting these complaints. The change affects the statistics published as Sections 2, 3 and 4 of the *Industrial Relations Act* and Sections 5,6,7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting (rev).

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Other Unfair Labour Practice Complaints (ss. 5 ,6 ,7 and 9 of the *Labour Relations Code* or ss. 2, 3 and 4 of the *Industrial Relations Act*)	1995	825	909	26	0	573	192	118	0	449
	1995 (rev)	488	529	25	0	338	97	69	0	221
	1994	899	831	9	0	586	136	100	0	362
	1994 (rev)	513	467	9	0	326	74	58	0	176
	1993	748	676	3	0	440	134	99	0	331
	1993 (rev)	422	390	2	0	249	73	66	0	177
	1992	416	345	0	0	205	108	32	0	176
	1992 (rev)	228	185	0	0	112	54	19	0	83
	1991	346	370	0	0	241	92	37	0	NP
	1991 (rev)	187	199	0	0	135	44	20	0	
	1990	386	388	5	0	220	100	63	0	NP
	1990 (rev)	229	225	3	0	124	62	36	0	
	1989	209	177	0	0	96	47	34	0	NP
	1989 (rev)	123	118	0	0	61	36	21	0	

NP --Not Published

Stay Applications

Applications for a stay of proceedings were counted as applications for the first time in 1993 (see Table 1: Applications and Complaints Filed and Disposed of). A footnote has been added to the Miscellaneous category to facilitate comparisons over time. In previous years, these applications were not counted.

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each employee in question if a ruling was made; if the application was withdrawn, it was counted as one application regardless of the number of employees involved. From 1989 on, an application regarding the inclusion or exclusion of employees is counted as one application regardless of the number of employees in question and regardless of whether or not a ruling is made.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989 (see Table 1: Applications and Complaints Filed and Disposed of). These applications have been processed by the Board/Council since 1974, but were not registered or counted prior to 1989.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover, for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 is counted as a separate application.

GENERAL NOTES

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled, including cases for which the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely, from category to category and from application to application.

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed of - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Complaints of Unfair Labour Practices												
Complaints Regarding Internal Union Affairs (s. 10)	2008	8	5	8	0	0	2	3	3	0	5	1
	2007	**9**	**11**	**12**	**3**	**0**	**3**	**0**	**6**	**0**	**8**	**1**
Complaints Regarding Duty to Bargain in Good Faith (s. 11)	2008	11	18	22	0	0	18	4	0	0	7	3
	2007	**12**	**37**	**38**	**0**	**0**	**23**	**7**	**8**	**0**	**11**	**15**
Complaints Regarding Duty of Fair Representation (s. 12)	2008	28	66	70	29	0	7	2	32[1]	0	24	3
	2007	**28**	**90**	**90**	**39**	**0**	**9**	**0**	**42[2]**	**0**	**28**	**2**
Other Unfair Labour Practice Complaints (ss. 5, 6, 7, 8 and 9)[3]	2008	75	193	220	2	0	154	31	33	0	48	86
	2007	**61**	**184**	**170**	**5**	**0**	**123**	**15**	**27**	**0**	**75**	**51**
Religious Exemption (s. 17)	2008	0	10	8	0	1	0	7	0	0	2	0
	2007	**0**	**5**	**5**	**0**	**0**	**0**	**5**	**0**	**0**	**0**	**0**
Certification Applications (ss.18, 19 and 28)	2008	49	185	180	2	42	0	96	40	0	54	161
	2007	**40**	**213**	**204[4]**	**1**	**39**	**0**	**121**	**43**	**0**	**49**	**191**
Certification Variances (ss. 28 and 142)	2008	31	171[5]	169[6]	6	17	0	134	12	0	33	54
	2007	**20**	**192[7]**	**181[8]**	**1**	**17**	**0**	**159**	**4**	**0**	**31**	**32**

[1] 22 of the 32 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.
[2] 21 of the 42 dismissed complaints filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.
[3] In 1996, the Board changed the method of counting complaints under ss. 5 and 6 of the *Labour Relations Code*. Figures in this category reported prior to 1996 cannot be compared to figures in this category reported from 1996 to present.
[4] Includes eight raid applications to expand the bargaining unit of an existing certification: two dismissed; six granted.
[5] Includes seven partial decertification applications.
[6] Includes seven partial decertification applications. See TABLE 3.
[7] Includes seven partial decertification applications.
[8] Includes six partial decertification applications. See TABLE 3.

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Certification Cancellations (ss. 33 and 142)[1]	2008	14	63	64	7	10	0	35	12	0	13	45
	2007	**10**	**78**	**74**	**7**	**8**	**0**	**49**	**10**	**0**	**14**	**49**
Cancellation of a Voluntary Recognition (s. 34)	2008	0	12	10	1	2	0	7	0	0	2	6
	2007	**0**	**4**	**4**	**0**	**1**	**0**	**2**	**1**	**0**	**0**	**2**
Permission to Alter Conditions of Employment (ss. 32 and 45)	2008	1	8	9	1	1	0	5	2	0	0	2
	2007	**2**	**5**	**6**	**0**	**3**	**0**	**3**	**0**	**0**	**1**	**1**
Alleged Unlawful Alteration of Employment Terms and Conditions (ss. 32 and 45)	2008	4	21	21	0	0	15	4	2	0	4	8
	2007	**13**	**7**	**16**	**0**	**0**	**14**	**0**	**2**	**0**	**4**	**10**
Declaration of Successor Status												
Successor Employer (s. 35)	2008	28	60	66	1	12	0	46	7	0	22	4
	2007	**27**	**66**	**65**	**2**	**13**	**0**	**47**	**3**	**0**	**28**	**13**
Successor Union (s. 37[2])	2008	3	8	10	0	1	0	8	1	0	1	1
	2007	**3**	**42**	**42**	**0**	**0**	**0**	**42**	**0**	**0**	**3**	**0**
Common Employer (s. 38)	2008	17	5	11	0	7	0	1	3	0	11	2
	2007	**16**	**17**	**16**	**0**	**13**	**0**	**2**	**1**	**0**	**17**	**10**
Accreditation Applications (s. 43)	2008	1	0	1	0	0	0	1	0	0	0	0
	2007	**0**	**2**	**1**	**1**	**0**	**0**	**0**	**0**	**0**	**1**	**0**

[1] See TABLE 3.

[2] The workload required to process applications in this category varies widely. The Board may receive one application per collective bargaining relationship or one application covering several collective bargaining relationships. This report reflects the number of applications filed and disposed of regardless of the number of collective bargaining relationships affected by those applications (any notable discrepancies are listed below).

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed of - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Accreditation Variances (ss. 43 and 142)	2008	1	6	6	0	0	0	6	0	0	1	0
	2007	**1**	**8**	**7**	**0**	**0**	**0**	**6**	**1**	**0**	**2**	**0**
Accreditation Cancellations (s. 142)	2008	0	1	0	0	0	0	0	0	0	1	0
	2007	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Alleged Failure to Execute or Comply with a Collective Agreement (s. 49)	2008	7	5	9	0	0	6	1	2	0	3	2
	2007	**4**	**9**	**6**	**0**	**0**	**2**	**2**	**2**	**0**	**7**	**3**
Facilitator[1] (s. 53(5))	2008	27	37	48	0	0	0	n/a	n/a	48[2]	16	0
	2007	**0**	**0**	**0**	**0**	**0**	**0**	**n/a**	**n/a**	**0**	**0**	**0**
First Collective Agreement (s. 55)	2008	3	13	13	0	0	10	n/a	n/a	3[3]	3	0
	2007	**5**	**9**	**11**	**0**	**0**	**7**	**n/a**	**n/a**	**4[3]**	**3**	**0**
Appointment of a Mediation Officer (s. 74)	2008	25	113	121	0	0	111	n/a	n/a	10[4]	17	0
	2007	**14**	**107**	**96**	**0**	**0**	**65**	**n/a**	**n/a**	**31[4]**	**25**	**0**
Collective Agreement Arbitration Bureau (CAAB)[5]												
Section 86 (Appointment of Arbitrator)	*2008*	*32*	*56*	*71*	*12*	*19*	*5*	*n/a*	*n/a*	*35[6]*	*17*	*n/a*
	2007	***13***	***83***	***64***	***0***	***22***	***5***	***n/a***	***n/a***	***37[6]***	***32***	***n/a***

[1] Statistics are not available for 2007 (this table does not reflect the number of actual s. 53(5) applications processed in 2007).

[2] Facilitator appointed.

[3] Applications in this category may be disposed of as Other for the following reasons: unit decertified, business closed, or matter referred to arbitration under s. 55(7).

[4] Applications in this category may be disposed of as Other for the following reasons: unit decertified, business closed, or application withdrawn and refiled under s. 55 if it is a first collective agreement.

[5] These applications were included in the *LRB Annual Report* for the first time in 2003. Beginning in 2006, figures for individual sections as well as the combined totals for CAAB (ss. 86, 87, 104, 105) are included in this report. In general, for this category, Withdrawn indicates withdrawal / settlement prior to any appointments and Settled indicates withdrawal / settlement subsequent to the appointment of a Settlement Officer but prior to appointment of an Arbitrator. See individual section notes regarding Other dispositions.

[6] Arbitrator appointed (recorded in previous 2004 and 2003 reports as Granted).

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed of - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Section 87 (Appointment of Settlement Officer)	*2008*	*9*	*57*	*52*	*0*	*13*	*25*	*n/a*	*n/a*	*14*[1]	*14*	*n/a*
	2007	***2***	***39***	***32***	***0***	***9***	***18***	***n/a***	***n/a***	***5***[1]	***9***	***n/a***
Section 104 (Appointment of Arbitrator)	*2008*	*27*	*209*	*231*	*1*	*56*	*32*	*n/a*	*n/a*	*142*[2]	*5*	*n/a*
	2007	***5***	***151***	***129***	***4***	***34***	***20***	***n/a***	***n/a***	***71***[2]	***27***	***n/a***
Section 105 (Appointment of Mediator-Arbitrator)	*2008*	*0*	*2*	*2*	*0*	*0*	*0*	*n/a*	*n/a*	*2*[3]	*0*	*n/a*
	2007	***0***	***4***	***4***	***0***	***2***	***0***	***n/a***	***n/a***	***2***[3]	***0***	***n/a***
Combined CAAB Sections	***2008***	***68***	***324***	***356***	***13***	***88***[4]	***62***[5]	***n/a***	***n/a***	***193***	***36***	***n/a***
	2007	***20***	***277***	***229***	***4***	***67***[4]	***43***[6]	***n/a***	***n/a***	***115***	***68***	***n/a***
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss. 57-67 and ss. 69-70)	2008	10	36	38	0	0	24	8	6	0	8	22
	2007	**5**	**173**	**168**	**0**	**0**	**102**	**50**	**16**	**0**	**10**	**92**
Replacement Workers (s. 68)	2008	4	6	10	0	0	8	2	0	0	0	5
	2007	**0**	**25**	**21**	**0**	**0**	**14**	**5**	**2**	**0**	**4**	**12**
Essential Service Designations (s. 72)	2008	3	6	6	0	0	3	3	0	0	3	0
	2007	**3**	**23**	**23**	**0**	**0**	**7**	**16**	**0**	**0**	**3**	**12**

[1] Matter referred back to the parties under s. 87(3).

[2] Arbitrator appointed (recorded in previous 2004 and 2003 reports as Granted). For 22 cases in 2008 and 17 cases in 2007, a Settlement Officer was appointed in addition to an Arbitrator.

[3] Mediator-Arbitrator appointed.

[4] For previous 2004 and 2003 reports, this figure is defined in a footnote regarding the number of CAAB applications Settled. See Note 5 on on previous page for further detail.

[5] For CAAB applications disposed of in 2008, 69 (70%) of 99 Settlement Officer appointments resulted in full and final settlement.

[6] For CAAB applications disposed of in 2007, 44 (67%) of 66 Settlement Officer appointments resulted in full and final settlement.

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed of - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Last Offer Vote (s. 78)	2008	0	18	18	1	0	0	16[1]	1	0	0	0
	2007	**0**	**16**	**16**	**0**	**1**	**0**	**12[2]**	**3**	**0**	**0**	**0**
Review of Arbitration Award (s. 99)	2008	25	37	37	2	5	0	7	23	0	25	0
	2007	**19**	**32**	**26**	**0**	**3**	**0**	**5**	**18**	**0**	**25**	**0**
Interim Order (s. 133(5))	2008	2	4	6	0	5	0	1	0	0	0	5
	2007	**6**	**16**	**20**	**0**	**11**	**0**	**6**	**3**	**0**	**2**	**14**
File an Order in Supreme Court (s. 135)	2008	7	23	29	0	11	0	18	0	0	1	0
	2007	**3**	**80**	**76**	**0**	**41**	**0**	**35**	**0**	**0**	**7**	**0**
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	2008	34	54	37	1	21	0	0	0	15[3]	51	5
	2007	**30**	**33**	**29**	**0**	**17**	**0**	**0**	**0**	**12[3]**	**34**	**14**
Reconsideration of a Decision (s. 141)	2008	14	43	47	0	6	0	6	35[4]	0	10	0
	2007	**22**	**57**	**65**	**1**	**10**	**0**	**5**	**49[5]**	**0**	**14**	**0**
Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) (s. 143)	2008	8	1	5	0	4	0	0	1	0	4	0
	2007	**5**	**5**	**2**	**0**	**0**	**0**	**2**	**0**	**0**	**8**	**1**

[1] In six cases the final offer was rejected, in seven cases the offer was accepted, and in three cases the applications were withdrawn prior to the ballots being counted.

[2] In eight cases the final offer was rejected, in one case the offer was accepted, in one case the vote was conducted but ballots not yet counted pending further adjudication, in one case the ballot box remained sealed pending result of an unfair labour practice complaint, and in one case the last offer vote was a nullity – ballots were not counted: see BCLRB No. B270/2007.

[3] Ruling made.

[4] For 30 of the 35 applications dismissed in 2008, leave to apply was denied.

[5] For 39 of the 49 applications dismissed in 2007, leave to apply was denied.

TABLE 1: Applications and Complaints Filed and Disposed of in 2008 (including comparative figures for 2007)

Type of Application / Complaint	Year	Filed in Previous Year	Filed in Current Year	Disposed of - Current							Open at Year End	Hearing Held
				Total Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other		
Miscellaneous	2008	18	55[1]	52[2]	0	11	16	13	12	0	21	5
	2007	17	77[3]	76[4]	1	8	20	30	17	0	18	14
Total	**2008**	**526**	**1607**	**1707**	**66**	**244**	**436**	**465**	**227**	**269**	**426**	**420[5]**
	2007	**395**	**1900**	**1795**	**65**	**252**	**432**	**626**	**258**	**162**	**500**	**539[6]**

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

[1] Includes 11 stay applications.
[2] Includes nine stay applications (one was granted, seven were dismissed, and one was withdrawn).
[3] Includes five stay applications.
[4] Includes six stay applications (six were dismissed).
[5] 420 applications disposed of in 2008 were heard sometime during the process. In 2008, the Board held 319 hearings (including 245 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2008.
[6] 539 applications disposed of in 2007 were heard sometime during the process. In 2007, the Board held 392 hearings (including 273 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2007.

Chart 1:
Number of Applications and Complaints FILED in 2008 - by Type

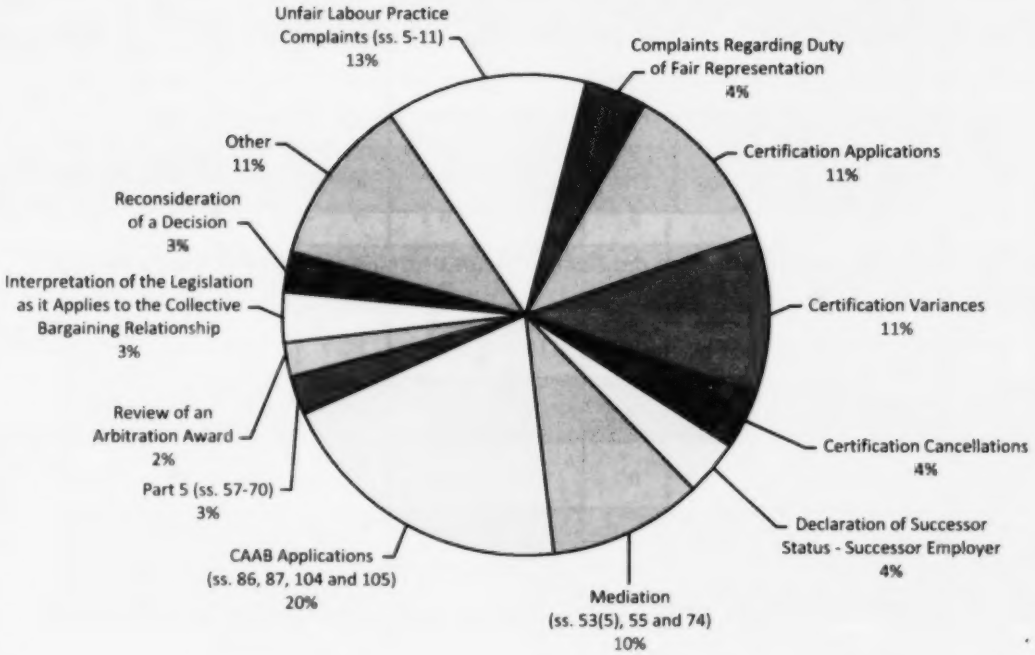
Unfair Labour Practice Complaints (ss. 5-11) 13%
Complaints Regarding Duty of Fair Representation 4%
Certification Applications 11%
Certification Variances 11%
Certification Cancellations 4%
Declaration of Successor Status - Successor Employer 4%
Mediation (ss. 53(5), 55 and 74) 10%
CAAB Applications (ss. 86, 87, 104 and 105) 20%
Part 5 (ss. 57-70) 3%
Review of an Arbitration Award 2%
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship 3%
Reconsideration of a Decision 3%
Other 11%

TABLE 1A: Certification Applications and Certification Cancellations Under s. 33(2) Granted - Analyzed by Industry
Year 2008

Type of Industry	Certification Applications		Certification Cancellations[1]	
	Number of Applications Granted	Number of Employees[2]	Number of Applications Granted	Number of Employees[3]
Accommodation, Food and Beverage Services	1	6	6	136
Agriculture and Related Services	3	78	0	0
Business Services	1	2	0	0
Construction	21	269	2	66
Educational Services	5	70	1	6
Finance and Insurance	1	4	1	7
Government Services	3	146	0	0
Health and Social Services	26	750	4	45
Manufacturing	9	532	3	29
Mining (including Milling), Quarrying and Oil Wells	2	177	1	16
Retail Trade	1	42	6	223
Transportation and Storage	9	361	4	161
Other Services	14	838	3	36
Total	**96**	**3275**	**31**	**725**

[1] In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

[2] The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances do occur between the time of application and the time of disposition of the application.

[3] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer.

Chart 1A: Certification Applications Granted by Industry Type (Number of Applications)

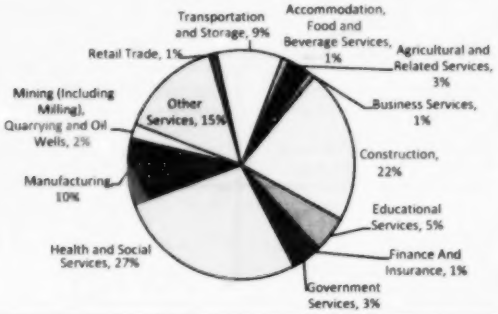

Chart 1B: Certification Applications Granted by Industry Type (Number of Employees)

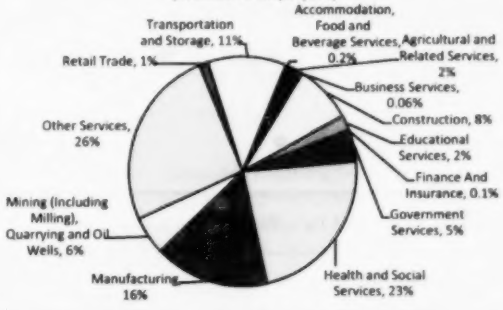

Chart 1C: Certification Cancellations (s.33(2)) Granted by Industry Type (Number of Applications)

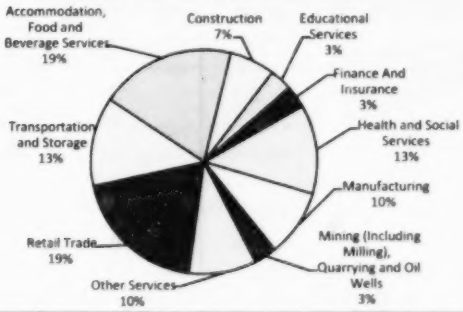
Accommodation, Food and Beverage Services, 19%
Construction, 7%
Educational Services, 3%
Finance And Insurance, 3%
Health and Social Services, 13%
Manufacturing, 10%
Mining (Including Milling), Quarrying and Oil Wells, 3%
Other Services, 10%
Retail Trade, 19%
Transportation and Storage, 13%

Chart 1D: Certification Cancellations (s.33(2)) Granted by Industry Type (Number of Employees)

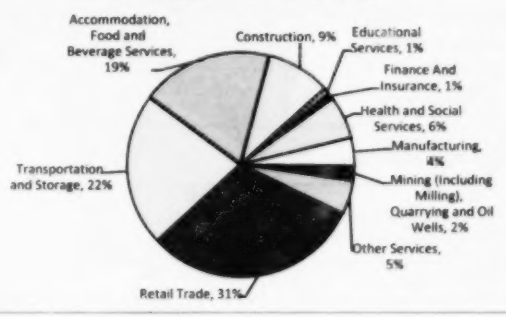
Accommodation, Food and Beverage Services, 19%
Construction, 9%
Educational Services, 1%
Finance And Insurance, 1%
Health and Social Services, 6%
Manufacturing, 4%
Mining (Including Milling), Quarrying and Oil Wells, 2%
Other Services, 5%
Retail Trade, 31%
Transportation and Storage, 22%

TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted - Analyzed by Union
Year 2008

UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears)	Certification Applications		Certification Cancellations[1]	
	Number of Applications Filed[2]	Number of Applications Granted	Number of Applications Filed[2]	Number of Applications Granted
BCGEU (not including Brewery Workers)	27	16	7	3
BC & Yukon Council of Film Unions	4	3	0	0
Carpenters (not including CMAW or CAST councils)	7	3	0	0
CAST (formerly CFAW Bargaining Council)	0	1	0	0
CMAW Bargaining Council	6	5	0	0
CAW	5	3	5	4
CLAC	5	2	0	0
CUPE	10	8	0	1
Cement Masons (formerly identified as Plasterers)	2	0	0	0
CEP (including Graphic Workers)	5	3	0	0
Education & Training Employees	1	1	0	0
Electrical Workers (IBEW)	13	8	0	1
Film Craftspeople (ACFC-CEP)	1	0	0	0
Food and Commercial Workers (UFCW)	5	3	2	2
Glazier & Glass Workers	0	0	2	0
Health Sciences Association (HSA)	2	0	0	0
Heat & Frost Workers	1	1	0	0
Hospital Employees Union (HEU)	27	12	4	2
Hotel Employees	0	0	5	2
IATSE	3	0	0	0
Iron Workers	2	0	0	0

TABLE 1B: Certification Applications and Certification Cancellations Under s. 33(2) Filed / Granted - Analyzed by Union
Year 2008

UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears)	Certification Applications		Certification Cancellations[1]	
	Number of Applications Filed[2]	Number of Applications Granted	Number of Applications Filed[2]	Number of Applications Granted
Labourers	12	6	2	3
Machinists and Aerospace Workers	1	0	2	2
Marine Workers	1	2	0	0
Millwrights	1	1	0	0
Nurses (BCNU)	3	2	1	1
Office and Professional Employees (OPEIU/COPE)	2	0	3	2
Operating Engineers (IUOE)	5	3	3	3
Painters (not including Glaziers 1527)	4	1	0	0
Plumbers	0	0	1	0
Public Service Alliance (PSAC)	1	1	0	0
PPWC	4	1	1	0
Retail Wholesale (RWU)	0	0	1	1
Steelworkers	8	1	6	2
Teamsters	10	6	3	2
Transit Workers (ATU)	4	2	0	0
Telecommunications Workers (TWU)	0	0	1	0
Single Employer Independent Union	1	1	0	0
Total	**183**	**96**	**49**	**31**

[1] Only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table. Thus, the number of applications filed and/or granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[2] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

TABLE 2: Certification Applications and Certification Cancellations Under s. 33(2)
Filed / Decided
Year 2008

Type of Application		Filed[1]	Granted	Dismissed	Total 'Decided'
Total Certification Applications	Number of Applications	183	96	40	136
	Number of Employees[2]	**9094**	**3275**	**2496**	**5771**
Certification Applications for Previously Unorganized Employees	Number of Applications	167	91	37	128
	Number of Employees	**8226**	**3030**	**2443**	**5473**
Certification Applications for Organized Employees	Number of Applications	16	5	3	8
	Number of Employees	**868**	**245**	**53**	**298**
Total Applications to Cancel a Certification Brought by Employees under s. 33(2)[3]	Number of Applications	49	31	12	43
	Number of Employees[4]	**662**	**725**	**239**	**964**

[1] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

[2] The number of employees on an application for certification is based on the information supplied by the union on the application form. Variances do occur between the time of application and the time of disposition of the application. The estimate could include some multiple counting where more than one union applied to cover the same group of employees, or where the same union made alternative applications to cover the same group of employees.

[3] Since only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table, the number of applications filed and/or decided may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[4] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer. The number of employees on an application for which a Return of Poll is either not available or not applicable (in particular, for the number of applications filed) is based on the bargaining unit size listed in the report of the Industrial Relations Officer.

TABLE 2A: Certification Applications and Certification Cancellations Under s. 33(2) Granted - Analyzed by Size of Bargaining Unit
Year 2008

	Certification Applications		Certification Cancellations[1]	
Number of Employees	Number of Applications	Percentage of Applications	Number of Applications	Percentage of Applications
1 to 10	42	43.8%	11	35.5%
11 to 20	20	20.8%	10	32.2%
21 to 30	5	5.2%	3	9.7%
31 to 40	4	4.2%	3	9.7%
41 to 50	4	4.2%	0	0.0%
51 to 60	5	5.2%	2	6.5%
61 to 70	2	2.1%	0	0.0%
71 to 80	2	2.1%	0	0.0%
81 to 90	2	2.1%	0	0.0%
91 to 100	1	1.0%	0	0.0%
101 to 200	7	7.3%	2	6.5%
Over 200	2	2.1%	0	0.0%
Total	**96**	**100%**	**31**	**100%**

[1] Since only those certification cancellation applications brought by employees under s. 33(2) of the *Labour Relations Code* are included in this table, the number of applications granted may not equal the corresponding figure from the Certification Cancellations category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

Chart 2A: Certification Applications Granted in 2008 Analyzed by Size of Bargaining Unit (Number of Employees)

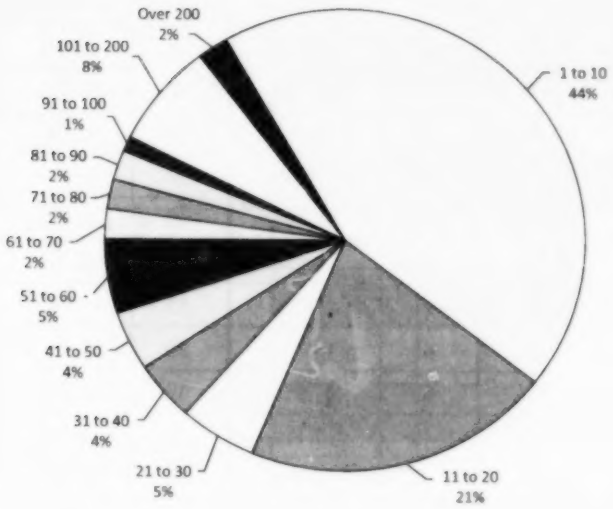

Chart 2B: Certification Cancellations (s. 33(2)) Granted in 2008 Analyzed by Size of Bargaining Unit (Number of Employees)

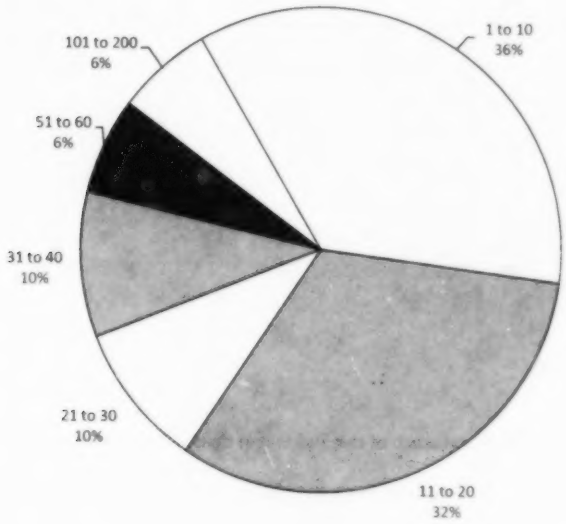

TABLE 2B: Certification Applications Granted Between 1990 and 2008 by Size of the Bargaining Unit

Year	Number and Percentage of Certification Applications						
	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		Total
1990	181	72.4%	47	18.8%	22	8.8%	250
1991	173	70.9%	47	19.3%	24	9.8%	244
1992	130	66.0%	47	23.9%	20	10.1%	197
1993	353	69.4%	102	20.0%	54	10.6%	509
1994	292	66.9%	86	19.7%	59	13.4%	437
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	348[1]
1999	239	65.8%	65	17.9%	59	16.3%	363[2]
2000	169	64.3%	45	17.1%	49	18.6%	263
2001	105	58.0%	40	22.1%	36	19.9%	181
2002	62	70.4%	13	14.8%	13	14.8%	88
2003	54	72.0%	11	14.7%	10	13.3%	75[3]
2004	58	65.9%	17	19.3%	13	14.8%	88
2005	170	63.9%	62	23.3%	34	12.7%	266[4]
2006	58	65.2%	21	23.6%	10	11.2%	89
2007	72	59.5%	26	21.49%	23	19.0%	121
2008	62	64.6%	13	13.5%	21	21.9%	96

[1] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted granted in 1998 amounts to 349.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted granted in 1999 amounts to 364.

[3] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications granted for a bargaining unit size between 1 and 20 employees is 50 and the total number of certifications granted in 2003 is 71.

[4] A number of applications to certify separate units were amended at some time in the process prior to disposition to certify a consolidated unit(s). A further application was granted and two certifications issued as a result. In total, in 2005, 266 certification applications were granted resulting in 249 certifications being issued.

TABLE 3: Applications to Cancel Certifications Disposed of Year 2008 and Year 2007

Type of Applicant (and Application)	Year	Granted	Dismissed	Not Proceeded With	Withdrawn	Total
Filed by Employee(s) (s. 33(2))	2008	31	12	7	8	58
	2007	**38**	**9**	**7**	**6**	**60**
Filed by Employee(s) (s. 142 - Partial Decertification)[1]	2008	4	2	1	1	8
	2007	**4**	**1**	**0**	**1**	**6**
Filed by Employer(s)	2008	1	0	0	1	2
	2007	**9**	**0**	**0**	**2**	**11**
Filed by Union(s)	2008	2	0	0	1	3
	2007	**2**	**1**	**0**	**0**	**3**
Filed Jointly by Union(s) and Employer(s)	2008	1	0	0	0	1
	2007	**0**	**0**	**0**	**0**	**0**
Total	2008	**39**	**14**	**8**	**11**	**72**
	2007	**53**	**11**	**7**	**9**	**80**

[1] Applications filed under s. 142 for Partial Decertification are included in TABLE 1 under the category Certification Variances; therefore, subtracting the number of applications filed by employees under s.142 from the Total number of applications disposed of in TABLE 3 will equal the number of applications disposed of in TABLE 1 for the Certification Cancellations category.

TABLE 4: Reconsiderations Disposed of in 2008

Type Of Application Being Reconsidered	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Duty of Fair Representation (s. 12)	6	0	1	1	0	8
Other Unfair Labour Practice Complaint (ss. 5-9)	6	0	2	0	0	8
Certification	2	0	2	2	0	6
Variance of a Certification	0	0	1	0	0	1
Partial Decertification	1	0	0	1	0	2
Declaration of Employer Successor Status	1	0	0	0	0	1
Common Employer	1	0	0	0	0	1
Permission to Alter Conditions of Employment	1	0	0	0	0	1
Alleged Illegal Strikes, Lockouts, Picketing, etc. (ss. 57-70)	1	4	0	0	0	5
Last Offer Vote	1	0	0	0	0	1
Review of Arbitration Award	7	0	0	0	0	7
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	1	1	0	1	0	3
Declaratory Opinion	1	0	0	0	0	1
Ruling re: Procedure	0	0	0	1	0	1
Ruling re: Remedy	1	0	0	0	0	1
TOTAL	**30**	**5**	**6**	**6**	**0**	**47**

Appellant	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Employer(s)	8	3	2	1	0	14
Union(s)	13	1	3	2	0	19
Employee(s)	9	1	1	3	0	14
TOTAL	**30**	**5**	**6**	**6**	**0**	**47**

Chart 4: Reconsiderations Disposed of in 2008
(Types of Applications Being Reconsidered)

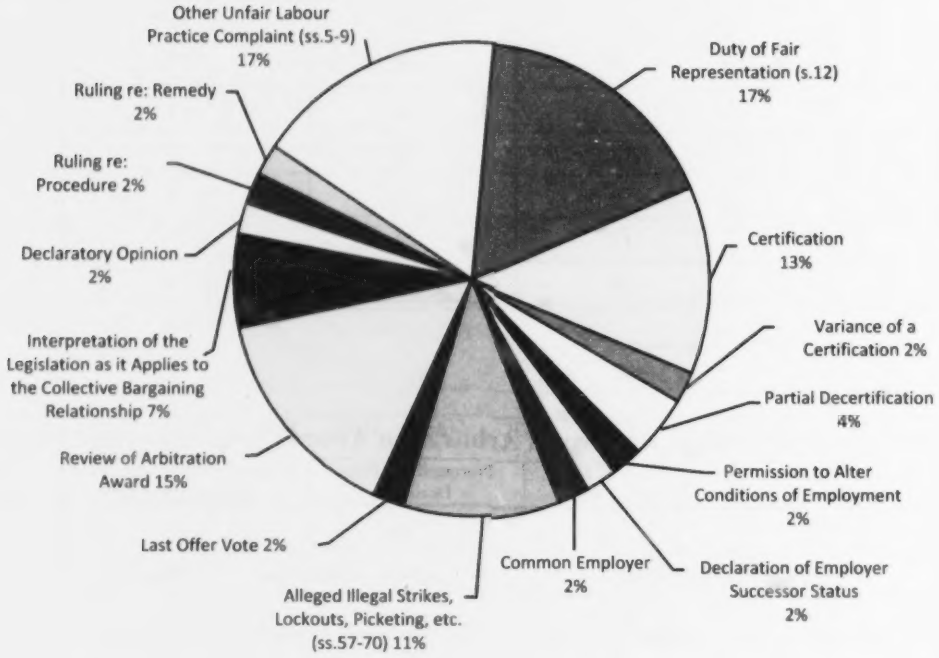
Other Unfair Labour Practice Complaint (ss.5-9) 17%
Duty of Fair Representation (s.12) 17%
Ruling re: Remedy 2%
Ruling re: Procedure 2%
Certification 13%
Declaratory Opinion 2%
Variance of a Certification 2%
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship 7%
Partial Decertification 4%
Review of Arbitration Award 15%
Permission to Alter Conditions of Employment 2%
Last Offer Vote 2%
Common Employer 2%
Declaration of Employer Successor Status 2%
Alleged Illegal Strikes, Lockouts, Picketing, etc. (ss.57-70) 11%

TABLE 5: "Success" Rate of Reconsiderations Disposed of in 1998 to 2008

Year	Total Applications Disposed of	Withdrawn / Not Proceeded With	Processed to a Final Decision	Resulted in a Revision of the Original Decision	"Success" Rate of Reconsiderations
1998	134	20	114	11	10%
1999	150	9	141	22	16%
2000	129	11	118	19	16%
2001	111	13	98	23	23%
2002	92	8	84	19	23%
2003	111	11	100	19	19%
2004	112	6	106	12	11%
2005	87	11	76	8	11%
2006	72	9	63	8	13%
2007	65	11	54	5	9%
2008	47	6	41	6	15%

TABLE 6: "Success" Rate of Reviews of Arbitration Awards Disposed of in 1998 to 2008

Year	Total Applications Disposed of	Withdrawn / Not Proceeded With	Processed to a Final Decision	Resulted in a Revision of the Original Decision	"Success" Rate of Reconsiderations
1998	65	10	55	13	24%
1999	54	11	43	7	16%
2000	69	5	64	15	23%
2001	60	13	47	16	34%
2002	58	4	54	12	22%
2003	55	7	48	10	21%
2004	58	8	50	11	22%
2005	36	4	32	6	19%
2006	50	7	43	11	26%
2007	26	3	23	5	22%
2008	37	7	30	7	23%

Chart 5: "Success" Rate - Reconsiderations

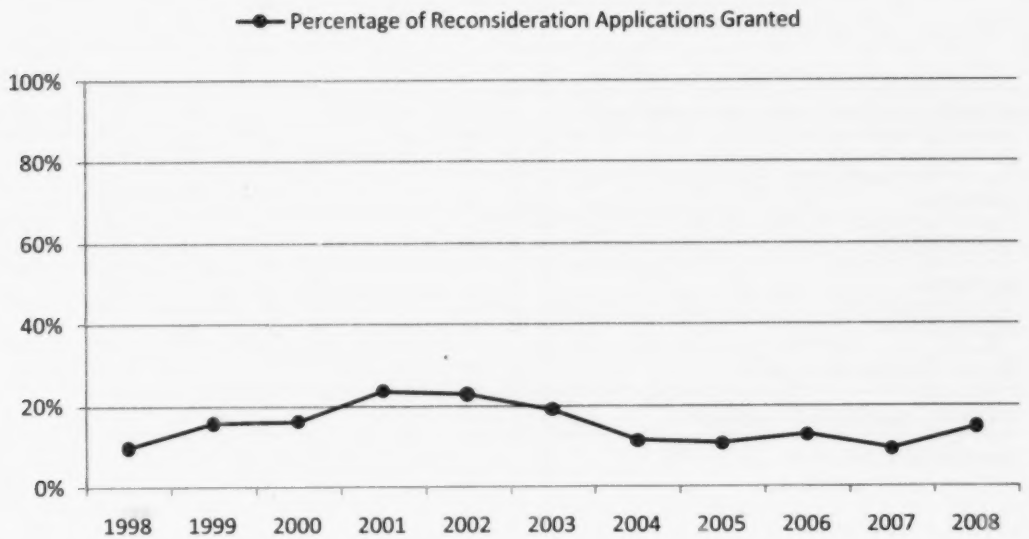

Chart 6: "Success" Rate - Review of Arbitration Award

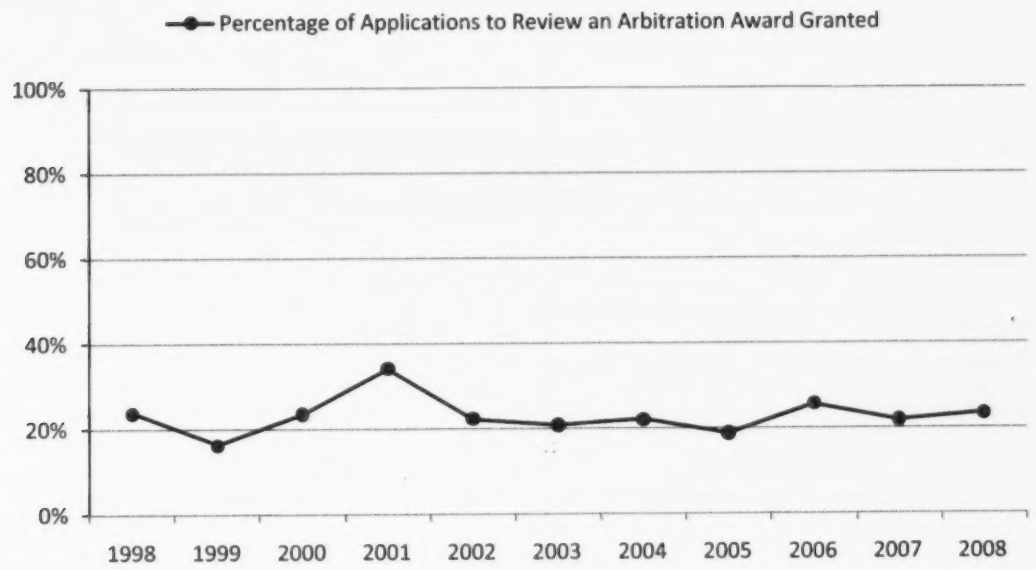

TABLE 7: Applications and Complaints Filed in 2008 Analyzed by Applicant

Type of Application	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total[1]
Complaints of Unfair Labour Practices					
Complaints Regarding Internal Union Affairs	0	0	5	0	5
Complaints Regarding Duty to Bargain in Good Faith	3	15	0	0	18
Complaints Regarding Duty of Fair Representation	1	1	65	0	66
Other Unfair Labour Practice Complaints	8	180	10	0	193
Religious Exemption	0	0	10	0	10
Certification Application	0	185	0	0	185
Certification Variance	31	143	8	0	171
Certification Cancellation	4	4	56	0	63
Cancellation of a Voluntary Recognition	0	1	11	0	12
Permission to Alter Conditions of Employment	8	0	0	0	8
Alleged Unlawful Alteration of Employment Terms and Conditions	0	21	0	0	21
Declaration of Successor Status					
Successor Employer	20	43	1	0	60
Successor Union	0	8	0	0	8
Common Employer	0	5	0	0	5
Accreditation Applications	0	0	0	0	0
Accreditation Variances	6	0	0	0	6
Accreditation Cancellations	1	0	0	0	1
Alleged Failure to Execute or Comply with Collective Agreement	0	5	1	0	5
Facilitator (s. 53(5))	35	26	0	1	37
First Collective Agreement	2	11	0	0	13
Appointment of a Mediation Officer	41	74	0	1	113
CAAB Applications					
Section 86 (Appointment of Arbitrator)	*4*	*52*	*0*	*0*	*56*
Section 87 (Appointment of Settlement Officer)	*3*	*56*	*0*	*0*	*57*
Section 104 (Appointment of Arbitrator)	*9*	*201*	*0*	*0*	*209*
Section 105 (Appointment of Mediator-Arbitrator)	*2*	*2*	*0*	*0*	*2*
Combined CAAB Sections	***18***	***311***	***0***	***0***	***324***
Part 5 Applications (Strikes, Lockouts, Picketing, etc.)	25	11	0	0	36
Replacement Workers	0	6	0	0	6
Essential Service Designations	0	0	0	6	6

TABLE 7: Applications and Complaints Filed in 2008 Analyzed by Applicant

Type of Application	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total[1]
Last Offer Vote	18	0	0	0	18
Review of Arbitration Award	14	15	9	0	37
Interim Order	3	1	1	0	4
File Order in Supreme Court	7	14	2	1	23
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	4	49	3	0	54
Reconsideration of a Decision	12	20	12	0	43
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation)	1	0	0	0	1
Miscellaneous	18	33	4	2	55
TOTAL	**280**	**1182**	**198**	**11**	**1607**[1]

[1] Totals by applicant do not equate with total applications because certain applications were filed jointly, by more than one type of party.

TABLE 8: Time Required to Process Certain Applications Disposed of in 2008

Type of Application	Number of Applications Disposed of[1]	Average Number of Days	Median Number of Days
Unfair Labour Practice Complaints Under s. 6 of the *Labour Relations Code* Where a Dismissed Employee is Involved	41	64	29
Complaints Regarding Duty of Fair Representation (s. 12)	41	188	161
Certification Applications (ss.18, 19, 28)	178	56	13
Certification Cancellations (s.33(2))	51	56	13
Declaration of Successor Employer (s. 35)	65	157	64
Common Employer (s. 38)	11	586	343
Review of Arbitration Award (s. 99)	35	277	240
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s. 139)	36	475	171.5
Reconsideration (s. 141)	47	144	80

[1] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

TABLE 9: Officer Assignments Completed in 2008

	Assignment Outcome						
Type of Application / Complaint	Settled/ Withdrawn	Resolved Issues / Assisted at Hearing	Narrowed Issues / Assisted at Hearing	To Adjudication (No Informal)	Report of Investigation	Other[1]	Total
Part V (ss. 57 to 70)[2]	8	1	2	3	0	0	14
Unfair Labour Practice (ss. 5 to 11)[3]	50	2	6	17	0	3	78
Certification & Variance to Expand the Bargaining Unit[4]	45	18	49	5	0	0	117
Decertification & Partial Decertification[5]	8	8	13	1	0	1	31
Collective Agreement Arbitration (CAAB) (ss. 86, 87, 104, 105)[6]	50	0	1	0	0	17[7]	68
Other	25	0	2	1	2	1	31
TOTAL	**186**	**29**	**73**	**27**	**2**	**22**	**339**

[1] Includes Consent Order issued.
[2] Includes complaints regarding strikes, lockouts, picketing, etc.
[3] Excludes duty of fair representation (s. 12)
[4] In reports prior to 2001, the number of certification & expanded bargaining unit applications Settled / Withdrawn were included in the Resolved Issues / Assisted at Hearing assignment outcome category.
[5] Prior to 2003 applications for partial decertification were included under Other types of applications.
[6] Reporting of assignments under the Collective Agreement Arbitration provisions of the *Labour Relations Code* first appears in the 2003 annual report.
[7] Includes 11 assignments closed with matter proceeding to arbitration.

TABLE 10: Requests for Automatic Certification Pursuant to s. 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation
(Previously s. 8(4)(e) of the Labour Relations Code and the Industrial Relations Act)

Year	Requested	Granted
1977	25	1
1978	17	1
1979	25	1
1980	22	0
1981	34	2
1982	15	2
1983	18	0
1984	21	3
1985	16	2
1986	18	2
1987	17	0
1988	10	0
1989	10	0
1990	18	3
1991	20	1
1992	32	6
1993	31	2
1994	31	2
1995	35	0
1996	41	1
1997	52	3
1998	40	0
1999	51	0
2000	21	1
2001	9	0
2002	12	3
2003	13	0
2004	8	1
2005	7	1
2006	8	0
2007	10	1
2008	17	2
TOTAL	**704**	**41**

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.
Note: Figures for 1993 to 1995 were not included in the Annual Reports for these years.